

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BRIAN STANLEY WITTMAN,

Plaintiff,

Case Number: 2:14-CV-12421

v.

HONORABLE GERSHWIN A. DRAIN
UNITED STATES DISTRICT JUDGE

ROSEMARY REAUME, ET AL.,

Defendants.

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**OPINION AND ORDER DENYING THE PLAINTIFF'S APPLICATION
TO PROCEED WITHOUT PREPAYMENT OF FEES AND COSTS AND
DISMISSING THE CIVIL RIGHTS COMPLAINT WITHOUT PREJUDICE**

Plaintiff Brian Stanley Wittman, a state prisoner currently confined at the Carson City Correctional Facility in Carson City, Michigan, has filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983 and an application to proceed without prepaying the fees and costs for the civil rights action pursuant to 28 U.S.C. § 1915(a).

Although Plaintiff allegedly lacks funds to pay the filing fee for this action, he had a current spendable balance of \$804.12 in his prison account as of June 18, 2014 when an administrative officer at the prison certified his financial statement. Moreover, the Court notes that the government provides Plaintiff with food, clothing, and shelter such that requiring payment of the filing fee for this action will not force him to go without necessary incidentals. See *Lyon v. Krol*, 127 F.3d 763, 765 (8th Cir. 1997). The Court concludes from the financial data before it that Plaintiff has not established indigence and that he should be able to prepay the filing fee for this action.

Accordingly, the Court **DENIES** Plaintiff's application to proceed without the

prepayment of fees and costs and **DISMISSES** the complaint **WITHOUT PREJUDICE**.

Plaintiff may refile his complaint as a new action with payment of the \$350.00 filing fee and administrative fee of \$50.00 (for a total of \$400.00). The Court makes no determination as to the merits of the complaint.

IT IS SO ORDERED.

/s/Gershwin A Drain

GERSHWIN A. DRAIN

UNITED STATES DISTRICT JUDGE

Dated: July 9, 2014